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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,864	03/26/2001	Frederick William Cain	P 279285 F.7595	6071

9629 7590 07/23/2002

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EXAMINER
PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
1761	21

DATE MAILED: 07/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/816,864	Applicant(s) CAIN ET AL.	
	Examiner Carolyn A Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 June 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *12-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *12-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12, 13 and 23-25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cherukuri (5,587,172) in light of Perry's for reasons of record used in rejecting claims 1 and 6-9.

Applicant urges that Cherukuri is different from applicants' product because the matrix in Cherukuri is a shear-formed matrix. This has been considered but is not persuasive because the claims as written are open to the inclusion of a shear-formed matrix. Also the claims are directed to a product and not to a process. The fact that the product may have been made by a different process does not overcome the rejection. Applicant urges that Cherukuri is not a network of ingredients. This has been considered but is not persuasive. Figures 1-3 clearly show a network of ingredients.

Applicant refers to process claims that were not rejected over the above reference. Applicant points to column 4 and states that their matrix is not crystalline. This feature is not a part of the claims. Applicant further urges that the matrix is retrieved from processing prior to the inclusion of the additives and therefore could not

become a part of the network. This is disagreed with as note the figures illustrating the product.

Claims 12, 13, 16, 17 and 20-25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Janda for reasons of record used in rejecting claims 1-3 and 5-8.

Applicant argues that Janda does not utilize the process that applicant uses. This has been considered but is not persuasive because the claims are directed to a product and not to a process. Process limitations do not carry weight in product claims. Applicant also refers to the matrix materials of claim 25 as not being components in Janda. This is disagreed with as note column 2, line 44.

The rejection of the claims over Kondo and Villamar has been dropped because these products are not solid particle based products.

Claims 12-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not seen that any and all active ingredients are effective in producing the desired improved organoleptic flavor in a product. Only the particular ingredients set forth at page 1, lines 6-7 are seen as the active organic components in the case.

Claims 12-31 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure, which is not enabling. The specific active ingredients set forth at page 1, lines 6-7 are critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188

USPQ 356 (CCPA 1976). The specific active ingredients are critical to the invention because these are the ingredients identified by applicant as having utility in health foods.

Claims 12 and 16-26 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kelly (5,922,392).

Kelly discloses a textured protein fiber matrix of the particle size set forth in the claims (see abstract and column 5, lines 28-29 and column 9, lines 1-3) The ratio of active ingredient , which in this case is protein to matrix described at column 3 and claimed at column 10, lines 2 and 3).

Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly.

Kelly discloses a textured protein fiber matrix of the particle size set forth in the claims (see abstract and column 5, lines 28-29 and column 9, lines 1-3) The ratio of active ingredient , which in this case is protein to matrix described at column 3 and claimed at column 10, lines 2 and 3). This product is used as a textured protein, which is known in the art as a meat substitute to utilize the textured vegetable protein of Kelly in the preparation of a meal would have been an obvious way to extend a protein source without consuming a lot of meat.

Claims 12, 16, 17 and 20-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Steinke (4,698,264).

Steinke discloses a particulate composition comprising a matrix composition and active ingredient (see abstract) At example 5 the active ingredient is an herbicide and

the product has a particle size range of 100-500 microns. The matrix contains dicalcium phosphate, mono-ammonium phosphate and cereal solids.

Claim 12 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sharma (4,804,548 or 4,828,857).

Sharma discloses an active ingredient containing a natural or artificial sweetener matrix made of lecithin, wax and fatty material. The particle size of the product is stated to be at 30 mesh in example 9 and 11, which, according to Perry's is equivalent to about a 550 micron particle size.

Claims 12, 16, 17, 20, 21 and 22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fuisz (5,576,042).

Fuisz discloses the manufacture of a high intensity matrix formed from melt-spinning flavor and/or sweetener. At example 1 Kool-Aid granules are made by spin melting Kool-Aid active ingredients with a corn oil matrix to form a product that is about 100 microns.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Carolyn Paden

CAROLYN PADEN 7-16 02
PRIMARY EXAMINER
GROUP 1300 1761